Before the
Federal Communication Commission
Washington, D.C. 20554

In the Matter of Federal-State Joint	**)**
Board On Universal Service Seeking	**)**
Comment On Certain Of The Commission's	**) CC Docket No. 96-45**
Rules Relating To High-Cost Universal	**)**
Support And The ETC Designation Process	**)**

Comments Of
Fred Williamson and Associates, Inc. ("FW&A")
On behalf of:

Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC

Collectively, the ILECs

INDEX AND SUMMARY OF COMMENTS

(I)
STATE OF THE MARKET

A. A Number Of Cellular Mobile Radio Service (CMRS) Carriers Now Provide Service In Rural Areas.

In its comments in WT Docket No. 02-379, FW&A[1] demonstrated that there is substantive wireless competition in each of the low-density exchanges in which the rural Incumbent Local Exchange Carriers (ILECs) it represents provide service.

> "All of the rural areas for the Kansas and Oklahoma ILECs represented by FW&A are currently served by multiple CMRS providers. In Oklahoma, on the average, there are five wireless carriers providing service in Chouteau's exchanges, two wireless carriers providing service in Pine's exchanges and four wireless carriers providing service in Totah's exchanges. In Kansas, on the average, there are three wireless carriers providing service in H&B's exchanges, five wireless carriers providing service in Moundridge's exchanges, over two wireless carriers providing service in Pioneer's exchanges, three wireless carriers providing service in Totah's exchanges and two wireless carriers providing service in Twin Valley's exchanges."[2]

This information tracks well with Commission data regarding the number of wireless providers serving rural America. CMRS provider assertions regarding barriers to entry if they do not receive support are belied by the rural market entry of other CMRS providers. With the exception of Western Wireless in Kansas, CMRS providers serving rural areas

---

[1] FW&A is a consulting company that represents small and rural ILECs in Kansas and Oklahoma.
[2] Comments of FW&A, WT Docket No. 02-379, filed January 27, 2003, page 3. See Attachments 1 to 4 of that filing for specific information regarding wireless providers and service coverage. See also the comments of the National Telecommunications Cooperative Association (NTCA) and Dobson in WT

in Kansas and Oklahoma provide their services without universal service support. Lack of support is not deterring or impeding either large or small wireless competitors from serving low-density rural ILEC areas.

B. Wireless Traffic Volumes Are Significant And Growing in Rural Areas.

Significant volumes of wireless traffic are terminating on rural ILEC facilities. FW&A analysis (summarized in the following table for the ILECs it represents) indicates that wireless minutes delivered to rural ILEC facilities for termination are now approximately 15% of the rural ILECs terminating access minutes for a given month.

Term Wireless MOU vs Term Access MOU Analysis

	Total LDS Monthly Term MOU	Total LDI Monthly Term MOU	Total LDS+LDI Monthly MOU	Wireless Term Monthly MOU	% Wireless to Total LDI+LDS
Total Rural ILEC	3,416,720	3,709,572	7,126,292	1,092,067	15.32%

Not only is this wireless traffic significant, it is also growing. For instance, from year-end 2001 through year-end 2002, the wireless minutes terminating on rural ILECs networks increased in volume by approximately 41%. Again, this usage is originated by CMRS providers serving rural areas, without universal service support.

Docket No. 02-379, filed January 27, 2003. Those comments also discussed the substantive wireless competition that now exists in rural LEC areas.

C. CMRS Carriers Serving Rural Markets Have Relatively Low Costs per Line.

CMRS providers serving rural markets, like those of the ILECs represented by FW&A, have costs that are lower than those of typical rural ILECs as the following table shows.

CMRS Provider	Estimated Total Annual Costs Per-Line***
Alltel*	$304
AT&T Wireless**	$377
Cingular**	$350
Leap*	$312
NEXTEL**	$450
Sprint PCS**	$353
T Mobile**	$308
USCC*	$357
Verizon Wireless**	$375
Western Wireless*	$425

*Information obtained from RCR Wireless News, dated March 24, 2003; see www.rcrnews.com "by the numbers"
**Information obtained from RCR Wireless News, dated March 3, 2003; see www.rcrnews.com "by the numbers"
***In the RCR News, these costs are characterized as "costs per gross add"

In comparison, rural ILECs represented by FW&A have an estimated total annual cost per line of approximately $1400 for Kansas and Oklahoma, and $1500 for Kansas alone. These cost differences do not reflect greater efficiencies on the part of the CMRS providers, but instead reflect cost savings realized by the CMRS providers because the CMRS service does not have to expend funds:

- To insure that no calls are dropped, there is no fade, static or echo, etc.
- To insure that all customers, even those in remote rural areas have, not only service, but service with the same quality as customers in urban areas.
- To provide equal access to the long distance provider of the customers choice.

- To provide access to advanced services.
- Etc.

D. There is no Relationship Between Competitive Entry and Universal Service Support for CMRS Providers.

Generally, CMRS provider costs are relatively low, as shown in Section C above, and thus costs are not a barrier to their entry into rural markets. This fact is borne out by the information in Sections A and B above. The information in those Sections clearly demonstrates that, not only are there a number of CMRS providers serving rural markets, but that these CMRS carriers are thriving. With the exception of Western Wireless, these CMRS carriers are serving Kansas and Oklahoma markets without high cost universal service support.

E. Current Commission CMRS ETC Policies Foster Artificial Competition and Provide No Public Benefit.

Regulators continue to endorse providing universal service support to certain wireless carriers even though most CMRS providers are serving rural areas without support; CMRS costs do not indicate a need for support; and CMRS providers are not required to provide reasonable rates, quality services, COLR, etc. At the federal-level, the Wireline Competition Bureau (WCB) clings to concepts and implements policies that use universal service support as a mechanism to promote competition in the hope that this will lower rates and bring new technologies and services to customers. Many State Commissions, based on WCB policies have also wrongly used universal service support to incent artificial CMRS competition in rural areas.

The faulty policies of the WCB were recently discussed by RCC Holdings (a CMRS provider) in its opposition to an Application For Review of the ETC status it had been granted by the Commission's WCB:[3] "In several prior decisions, the WCB has conducted the statutory public interest analysis by focusing on competitive benefits, specifically considering: (1) Whether consumers will benefit from competition, and (2) Whether consumers would be harmed by the designation of an additional ETC."[4] Examples of such faulty analysis are in the following WCB findings, both in the RCC case and in others:

- "…we find no merit in the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates or reduce service quality…"[5]
- "…competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to customers."[6]
- "…[c]ompetition will allow customers in rural Alabama to choose service based on pricing, service quality, customer service, and service availability….the provision of competitive service will facilitate universal service….by creating incentives to insure that quality services are available at 'just, reasonable and affordable rates.'"[7]
- The Alabama Rural LECs: "…have not presented persuasive evidence to support their contention that designation of an additional ETC in the rural areas at issue

[3]FCC Docket No. 96-45, RCC Holdings Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, RCC Holdings Opposition to Application for Review, dated January 7, 2003.
[4] RCC Opposition, page 4.
[5] Id., page 5.
[6] Id.
[7] Id., page 6.

will reduce investment in infrastructure, raise rates, reduce service quality…or result in loss of network efficiency."[8]

It is clear from these quotes that the predominate, if not sole focus of the WCB in its public interest analysis involving providing universal service support to CMRS providers requesting ETC status in rural areas has been a bias toward the introduction of supported competition,[9] without a proper analysis of the effects of such supported competitive entry, nor a proper analysis to determine whether supported entry is warranted or necessary. These statements make it clear that the WCB accepts the rhetoric about the benefits of competition while rejecting any claims or arguments regarding the harmful effects on universal service of supported competitive entry in rural ILEC areas. This is a bias in favor of competition that is not lawfully allowed and precludes a fair and balanced public interest analysis. For instance:

1. Competition is not the issue. CMRS competitors exist in nearly all of the areas served by rural ILECs. The competitive benefits that the WCB touts are presumably already available without the need to support one of these competitors. Therefore, the issue is really that the WCB has decided to support with universal service funding one of those CMRS competitors. The WCB has not indicated why it is in the public interest to provide support to CMRS competitors, when it is apparent that support is not required by the CMRS providers that have been and are already competing in the very same areas for which the WCB is directing support. In other words, why would a CMRS provider requesting ETC status need the support and why is it in the public interest to provide that

[8] Id., page 7.
[9] Utilization of universal service funding to provide incentives for a competitor to enter a rural market.

support when vibrant CMRS competition already exists without such support? The WCB has not made this critical public interest analysis.

2. The WCB could validate its claims about the benefits of competition. It could determine if existing CMRS competition has improved service quality, lowered prices or resulted in better service availability to consumers. In fact, if the WCB would perform this analysis, it would likely find that quality services at just, reasonable, and affordable rates are now provided only by rural LECs. It is doubtful that any would make these claims for the CMRS providers. Further, it could explain how providing universal service support to just the latest CMRS providers would produce these hoped for beneficial results, when the CMRS providers designated as ETCs, as a result of a faulty interpretation of Section 331(c) of the Act[10], have no quality of service or rate oversight to insure that they provide quality service at just, reasonable or affordable rates.[11] It appears that the purported benefits of designating CMRS providers as ETCs is based on pure speculation by the WCB, and not an in depth public interest analysis.

3. The WCB has apparently relied on unsubstantiated assumptions (authorizing an additional ETC may provide incentives to the incumbent to implement new operating

---

[10] Communications Act of 1934, as amended by the Telecommunications Act of 1996.

[11] The CMRS providers argue that the Commissions may not regulate the basic universal service entry or rates of wireless carriers, even though those wireless carriers may receive Federal universal service funding for their basic universal services. The Commission has erroneously agreed with this misreading of the Act in WT Docket No. 00-239, Memorandum Opinion and Order, Released August 2, 2002. This interpretation would allow a wireless carrier to receive publicly provided support with essentially no regulatory oversight. This is not what the Communications Act envisioned. The Act in Section 332(c), does not allow Commissions to regulate the rates and entry of cellular carriers. However, if these carriers seek to be eligible for universal service support, cellular carriers, like all local exchange carriers, are subject to the Act's universal service provisions in Section 214(e) and Section 254. These provisions require all carriers, on a competitively neutral basis, to meet requirements established by Federal and State Commissions in order to receive universal service funding. Cellular carriers seeking universal service funding must not be allowed to avoid their universal service responsibilities by claiming that Section 332(c) of the Act prohibits rate and entry regulations and thus Commissions, both Federal and State, may not regulate their universal service offerings. This is a misreading of the Act's provisions.

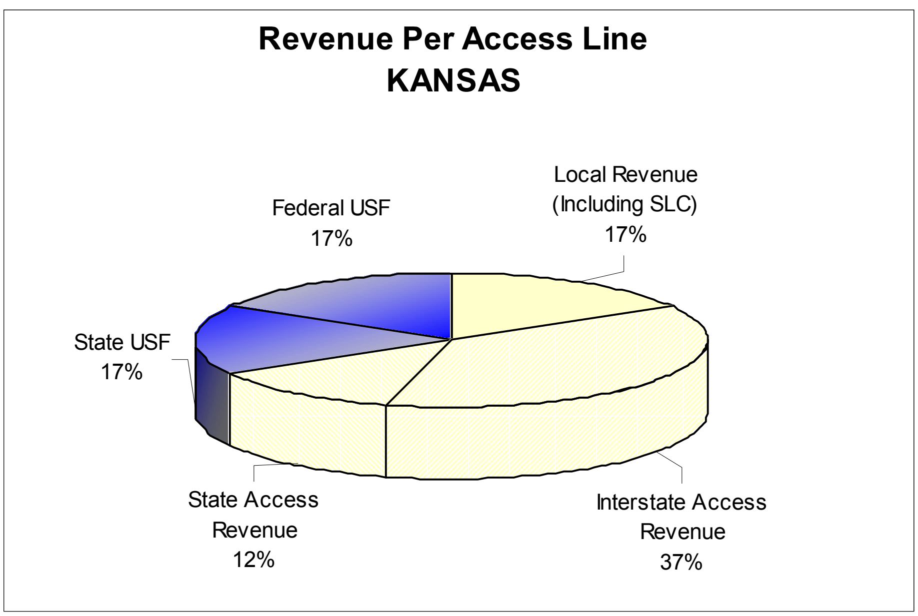
efficiencies, lower prices, and offer better service to customers) and ignored pertinent information in order to dismiss the fact that there will be costs to the rural LECs and rural telecommunications consumers. A modest amount of public interest fact finding would demonstrate that the rural LECs as a whole are efficient with little overhead, provide the lowest prices now for telecommunications services to their consumers and offer the best highest quality service in the industry.

These public interest concerns are not beyond the scope of an ETC designation analysis, but are squarely part of the public interest analysis that should be performed by the WCB or State Commissions. The Communications Act was intended to serve and promote the public interest in the pursuit of the twin objectives of competition and universal service. Essentially, the public interest means seeking to insure that in the short and long term, the public as a whole is better off, and certainly not worse off, as a result of the Federal and State Commission actions to implement the Act's provisions. The Act does not contain, as CMRS providers infer, any provisions that promote the rural entry of wireless with universal service funding. Congress did not intend that universal service public interest issues be subservient to, or ignored by the Commissions (Federal of State) in an effort by those Commissions to artificially introduce competition into rural areas.

F. Market Effect on Rural ILECs of Current Commission Policies to Authorize CMRS ETCs.

The rural ILECs represented by FW&A in Kansas provide service to rural areas of the state that have a low population density – approximately, on the average, 4 lines per square mile, and high costs to provide basic service - $120/line per month or approximately $1500/line annually. Additional expenditures of between $50/line and $60/line per month are required to provide advanced services such as DSL. As required by the Act, the ILECs maintain a quality, universally available network with services priced at reasonable and affordable rates comparable to those in urban areas and provide advanced technologies and services.

The following figure shows the revenues necessary to recover the high costs to fulfill rural Carrier of Last Resort (COLR) responsibilities and to maintain quality services at reasonable and affordable rates. Sufficient recovery and maintenance of affordable rates is only possible if (a) IXCs, Wireless providers, CLECs, etc. pay for their use of the ILEC's network to originate and/or terminate their customer's calls, and (b) Rural ILECs receive universal service funding. Federal and state universal service funding recover 34% or $40 per-line per month of the rural ILECs costs.



	Monthly Revenue Per Access Line	
Local Revenue (Including SLC)	**$ 20.00**	**17%**
Interstate Access Revenue	**$ 45.00**	**37%**
State Access Revenue	**$ 15.00**	**12%**
State USF	**$ 20.00**	**17%**
Federal USF	**$ 20.00**	**17%**
Total	**$ 120.00**	**100%**

The probable effects of the WCB's drive to introduce artificial CMRS competition in rural ILEC markets through the use of universal service funding will be to force increases in local rates. Because of the loss of universal service support, or worse, loss of lines and because of WCB (and consequently State Commission) policies to use universal service support to artificially introduce CMRS competition, basic local service rates for rural ILEC consumers would have to be dramatically increased to potentially unaffordable levels. It is likely that these modified rates levels would not be comparable with those available in urban areas, and therefore their levels would be at odds with the provisions of Section 254 of the Act. In a sparsely populated, low-density market, loss of local revenues and universal service revenues to an additional ETC will not cause the ILEC COLR costs (that are necessary to provide a universally available network and thus universal service) supported by these revenues to disappear. This means that lost revenues will result in higher consumer rates or increases in universal service funding. This result, stemming squarely from policies to artificially designate additional CMRS ETCs in rural LECs service areas, clearly harms consumers by causing unaffordable local service rate increases (or increases to universal service fund surcharges).

(II)
DESIGNATION OF MULTIPLE ETCs IN RURAL LEC SERVICE AREAS

Without a public interest analysis by the WCB or State Commission as to the effect of designating CMRS ETCs and the imposition of additional requirements, the public interest is not served because such an analysis may find that costs (including the increase in the size of the universal service fund due to supporting multiple carriers or the loss of all revenues for lines lost and the loss of network efficiency due to multiple competing carriers), exceed the benefits of designating multiple ETCs.

A. ETC Designation Requirements of the Act for Rural LEC Service Areas.

The Act's provisions promote the interests of rural areas and are intended to provide universally available service to customers in rural LEC areas. Because of Congressional concern for the universal availability of service in high-cost, sparsely populated rural areas served by rural LECs, the Act was quite specific with regard to Congress' intent regarding the public interest:

> (1) "Exemption. Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State Commission determines…that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254…."[12]

[12] Act, Section 251 (f)(1)(A).

For larger and non-rural LECs, Congress and the Act provided no exemption from the competitive provisions of the Act. However, it is clear from the exemption that has been provided to only rural LECs, that Congress' public interest concerns regarding rural LEC service areas centered on (a) Whether competitive entry is economically feasible in rural ILEC areas and (b) The effect that competitive entry in rural LEC areas would have on universal service:

> (2) "DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS…Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier….Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."[13]

The intent of Congress here is crystal clear – an additional ETC is not required in rural LEC areas as a matter of law, but may be allowed only if adding an additional ETC is in the public interest. Again, Congress did not intend that universal service public interest issues be subservient to, or ignored by the Commissions in an effort by those Commissions to artificially introduce competition into rural areas.

<u>These provisions of the Act neither promote nor preclude the rural entry of a wireless provider. They do not require or even encourage the Commission to promote wireless entry with universal service funding. Instead, the Act requires that universal service public interest concerns be fairly and thoroughly evaluated – an evaluation that CMRS providers seeking ETC status would like to avoid.</u> Commissions, in concert with the

Act's provisions, when evaluating potential additional ETCs in rural LEC service areas, have an obligation and statutorily imposed duty to perform, not just a cursory analysis to determine if the potential ETC meets the Section 214 (e)(1) requirements, but an in-depth public interest analysis. The Act contains absolutely no provision that requires the Commission(s) to promote, with universal service funding, wireless entry into rural markets. In fact, such promotion would be anti-competitive, would not be competitively and technological neutral and is at odds with the public interest analysis required by the Act.

B. If a CMRS Provider Seeks ETC Designation, The Act In Sections 214 and 254 Imposes Additional Requirements That Serve The Public Interest.

The Commission(s), as required by the Act, should administer a competitively neutral universal service program that provides rural consumers with comparable choices in telecommunications service to those available in urban areas, and places competitors on a level playing field with incumbents. However, what CMRS providers seeking ETC status really want is an anti-competitive advantage vis-à-vis the rural LECs and other non-supported CMRS providers already operating in the rural market. Currently, CMRS providers will not provide universal service as envisioned by Congress in Sections 214 and 254 of the Act because:

- They will not be required to provide just, reasonable and affordable universal service rate levels comparable to those charged by the rural LECs or those charged in urban areas. They may and do charge any rate they wish with no regulatory oversight and still qualify for support. Most often, as the following table shows, CMRS rates, in particular their originating and terminating rates,

[13] Act, Section 214 (e)(2).

should be considered unreasonable and at odds with the provisions of Section 254 of the Act, if the CMRS provider seeks ETC status.

Carrier	Web Site	Basic Rate	Anytime Minutes	Addl. MOU Rate	LD Rate	Roaming
Cellular One	www.cellularone.com *	$20.00	60	39 cents		59 cents
US Cellular	www.uscc.com	$25.00	125	40 cents	30 cents	69 cents
AT&T	www.attws.com	$19.99	45	45 cents	20 cents	69 cents
Sprint	www.sprintpcs.com	$35.00	300	40 cents	25 cents	50 cents
Verizon	www.verizonwireless.com	$25.00	125	45 cents	20 cents	69 cents
Nextel	www.nextel.com	$35.99	100	40 cents	20 cents	NA

* Cellular One a.k.a. Western Wireless

- They will not be required to provide quality services. For instance:

> "Service called inadequate and shoddy…PINE RIDGE – 'If the [Western Wireless] phone service was any worse, they might as well take it out'…the cellular service is a joke and falls short of the promises made by the company."[14]

- They will not be required to provide access to advanced and/or information services.
- They will not be required to provide presubscribed access to long distance carriers.[15]
- They will not be required to explain to any regulatory body when it decides to abandon a particular service market or area.
- They will not be required to justify its need for support based on its own costs.
- They will not be required to assume COLR responsibilities.

[14] Western Wireless company takes heat from tribal members, an article from the Lakota Journal, by Paul Richardson, for the week of September 20 to 27, 2002, information in brackets added for clarity.

LEC ETCs are required to meet these obligations and consequently, they meet the public interest and universal service requirements of Sections 214 and 254 of the Act. CMRS providers seeking ETC status, however, characterize these public interest requirements as barriers to entry and assert that Section 332 of the Act preempts Commission(s) from imposing these public interest requirements.[16] These requirements are not barriers to entry and CMRS ETCs are not shielded from providing these public interest requirements by Section 332 of the Act. CMRS providers may provide cellular service, as do other wireless carriers, to rural areas under Section 332 without rate and entry regulations. However, if a CMRS provider seeks to be supported by universal service funding, additional requirements are required by the Act (Sections 214 and 254) to insure that carriers receiving funding serve the public interest. Designating a wireless carrier as an ETC and providing universal service funding without insuring that the CMRS ETC will meet the requirements listed above is anti-competitive, at odds with the provisions of the Act and risks the provision of quality, universally available services at affordable rates to consumers – the basic tenets of universal service.

---

[15] See FW&A Comments (filed April 14, 2003) and Reply Comments (filed April 28, 2003) in FCC Docket 96-45,

[16] CMRS providers argue that the Commissions may not regulate the basic universal service entry or rates of wireless carriers, even though those wireless carriers may receive Federal universal service funding for their basic universal services. The Commission has erroneously agreed with this misreading of the Act in WT Docket No. 00-239, Memorandum Opinion and Order, Released August 2, 2002. This interpretation would allow a wireless carrier to receive publicly provided support with essentially no regulatory oversight. This is not what the Communications Act envisioned. The Act in Section 332(c), does not allow Commissions to regulate the rates and entry of cellular carriers. However, if these carriers seek to be eligible for universal service support, cellular carriers, like all local exchange carriers, are subject to the Acts universal service provisions in Section 214(e) and Section 254, that require all carriers, on a competitively neutral basis, to meet requirements established by Federal and State Commissions in order to receive universal service funding. Cellular carriers seeking universal service funding must not be allowed to avoid their universal service responsibilities by claiming that Section 332(c) of the Act prohibits rate and entry regulations and thus Commissions, both Federal and State, may not regulate their universal service offerings. This is a misreading of the Act's provisions.

Insuring that all ETCs meet the Act's universal service requirements is not a barrier to entry as CMRS ETCs claim. Instead, those requirements serve the public interest by requiring that in trade for universal service funding, ETCs provide quality universally available universal services and access to information and advanced services at affordable rates that are comparable to rates and services in urban areas.

C. The Communications Act Requires a Fair and Balanced Review of Public Interest Considerations Before Additional ETCs are Designated in Rural ILEC Service Areas. Much of this section seems redundant with what was said previously

The Communications Act was passed with twin objectives – support for competitive entry into telecommunications markets and support for universal service. The Act did not intend for the Commission or State Commissions to focus on competitive objectives to the exclusion or detriment of universal service. If it had, Congress would have made it clear that the competitive objectives were paramount. What is clear is that the Communications Act was intended to serve and promote the public interest in the pursuit of these twin objectives.

The Act states, "[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier….Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."[17]

[17] Act, Section 214 (e)(2).

The intent of Congress here is crystal clear – an additional ETC is not required in rural ILEC areas as a matter of law, but may be allowed, but only if adding an additional ETC is in the public interest. Again, Congress did not intend that universal service public interest issues be subservient to, or ignored by the Commissions in an effort by those Commissions to artificially introduce competition into rural areas.

As a result of these provisions of the Act, Commissions, when evaluating potential additional ETCs in rural ILEC service areas, have an obligation and statutorily imposed duty to perform, not just a cursory analysis to determine if the potential ETC meets the Section 214 (e)(1) requirements, but an in depth public interest analysis to determine:

- What specific and factually supported consumer benefits will an ETC competitor bring to the rural market? For instance, there should be concrete evidence that

  (a) There will be lower prices than those offered by the existing ILECs and Cellular Mobile Radio Service (CMRS) competitors in the market and (b) New services provided that are not already offered in that market.[18]

- Will new technologies actually be introduced to the rural market and do they require universal service support? Will the supported CMRS ETC provide technologies not already offered by existing CMRS competitors in the market? Why should the technology of the new CMRS ETC be supported when the same

[18] The preconceived bias in favor of ETC supported competitive entry is that a ETC CMRS competitor, when introduced to a rural market, will cause prices to be lowered and new services to be offered to consumers in the rural market. There is simply no evidence to support this bias. First, existing CMRS competitors in these markets do not currently offer lower rates than do existing ILECs and generally compete with each other based on service options, not price reductions. Second, the existence of CMRS competitors has resulted in the loss of both local and access revenues for rural ILECs. This loss will convert into a requirement to increase universal service funding for rural ILECs or to raise, not lower, customer rates in order to maintain a quality network that is universally available. Artificially inserting a supported ETC CMRS competitor into an already competitive rural market will simply and uneconomically accelerate the loss of ILEC revenues requiring further universal service funding increases or local rate increases by the rural ILEC. Finally, the evidence of Commission actions to date does not demonstrate that

or similar technologies of existing CMRS competitors in the area are not supported?[19]

- Will the additional ETCs provide (a) Quality services at just, reasonable and affordable rate levels as required by the Act[20] and (b) Access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas?[21]

- Will the rural market support more than one ETC on an economically viable basis without harming the ability of the rural ILEC or competitor to provide universally available service? Is it likely that the loss of lines to an ETC competitor combined with the possible loss of support to the competitor will result in

---

competitive entry will lower rates for the average consumer. Local rates for the average consumer are now much higher and toll rates, which had declined, are beginning to rise.

[19] There is substantial evidence that there are CMRS competitors currently operating in the rural markets. The existence of unsupported CMRS competitors in rural ILEC markets is not an isolated occurrence as demonstrated by the Commission's findings and comments filed in WT Docket Nos. 02-379 and 02-381. There is no evidence as to why it is appropriate and in the public interest to support a particular ETCs technological entry when the wireless technology the CMRS ETC uses is already provided in the rural market it seeks to enter on an unsupported basis by other CMRS competitors.

[20] Act, Section 254 (b)(1). In fact, CMRS providers, even though they would be an ETC and provide "universal services," will not currently be required by to provide quality services at just, reasonable and affordable rates. At odds with the public interest criteria and principles that Congress placed in the Act for the provision of universal service, CMRS ETCs will not have rate levels or quality of service objectives or oversight. A fair and balanced public interest analysis would find that, as compared with the service provided by the rural ILECs, the CMRS ETCs service is inferior, not in compliance with Section 254 of the Act and therefore, not in the public interest.

[21] Act, Section 254 (b)(3). In fact, CMRS providers, will not provide access to presubscribed interexchange services. Because CMRS ETCs will not provide equal access to the customer's choice of a presubscribed interexchange carrier, a fair and balanced public interest analysis would find that, as compared with the service provided by the rural ILECs, the CMRS ETC's service is inferior, not in compliance with Section 254 of the Act and therefore, not in the public interest. Additionally, there appears to be no concrete evidence that CMRS ETCs will provide access to advanced telecommunications and information services, as do the rural ILECs. If this is the case, the CMRS ETC is again providing inferior service, is not in

increases in ILEC consumer rates and/or increases in the requirements for universal service funding by the ILEC?[22]

- What are the costs of adding an ETC competitor to a rural market?
- Will universal service funding be predictable and sufficient as required by the Act[23] if additional ETCs are introduced into the rural market?
- Is the potential ETC financially viable and likely to remain in the market?
- Are there currently CMRS providers in the market that are not receiving universal service support? If more than one wireless provider is providing service in a rural universal service area, these wireless providers apparently can compete effectively among themselves and with the rural wireline provider without receiving universal service funding. Is this because their rates and prices are not constrained to a just and reasonable rate for residential and business service as

---

compliance with the public interest criteria for universal service in Section 254 of the Act, and should not be designated as an ETC.

[22] The WCB, in the RCC case, rejected the proposition that designating an additional ETC into a rural sparsely populated market will cause reductions in investment or service quality or consumer rate increases. In the alternative, the WCB asserted that issues involving increases in universal service funding by the ILEC to avoid rate increases and deterioration in service quality, are beyond the scope of its analysis in designating RCC as an ETC. <u>A thorough public interest analysis by the WCB would have shown that these are valid public interest concerns that should not have been dismissed by asserting, without evidence, that the ILECs could implement operating efficiencies</u>. There is no evidence that the small rural ILECs are inefficient. Because of scale economics, it is unlikely that the rural ILECs will be able to replace, through efficiencies, revenues (local, access and universal service) lost to a CMRS ETC. These lost revenues are essential to a small ILEC's ability to provide quality universally available service at affordable rate levels and to its ability to continue investing in existing and advanced services and technologies. <u>Evidence demonstrating the rural LECs will experience actual and factual harm, exists in an examination of the market failure and bankruptcies of Global Crossing and WorldCom.</u> These backrushes resulted in the loss of access revenues that the ILECs rely on (as they rely on local and universal service funding revenues) to provide universal service, meet their Carrier of Last Resort (COLR) responsibilities and invest in new facilities and technologies. <u>Because of the loss of revenues, ILECs delayed or cancelled network upgrades and investments in advanced services. Additionally, because the rural ILECs are rate of return regulated, in the longer term, this loss of essential revenues may result in increases in rate levels.</u> The WCB and State Commissions should, in a public interest analysis, evaluate existing competitive failures and their effects on ILECs and the public in order to insure that the same mistakes are not repeated by blindly promoting artificially induced and supported competition into a rural market that will likely not support, economically and with sufficient universal service funding, the rural ILEC and additional competitive ETCs.

[23] Act, Section 254 (b)(5).

compared to the wireline carrier whose rates are constrained? Is this because wireless carriers are not required to incur the costs incurred by the wireline carrier to insure Carrier of Last Resort (COLR) service, meet quality of service objectives, etc?

- Is it in the public interest to provide funding to these wireless providers when the fund size is growing and multiple CMRS providers already serve an area? Does that funding contribute to the public interest and consumer welfare?
- Is it likely that the other CMRS providers that are providing service in the rural ILEC area but not receiving universal service support will seek support if ETC status is granted to one CMRS provider? What effect will that have on the predictability and sustainability of universal service support?

The Act requires at least this level of analysis to determine if designation of an additional ETC is appropriate in rural ILEC service areas. The public interest analysis must, in the end, analyze these questions (and possibly other relevant information) to determine if the benefits of designating an additional CMRS ETCs outweigh the costs to the public and rural ILEC of the additional ETC.

(III)
CMRS ETCS MUST DEMONSTRATE A COST BASED NEED FOR SUPPORT -

CMRS Providers Have Provided No Factual Evidence That Wireless Costs Are A Barrier To Rural Entry Or That Their Costs Require Universal Service Support.

The public interest is also served by requiring ETCs to demonstrate a cost based need[24] for funding in order to insure that the funding levels they support are minimized. As Commissioner Adelstein has recently observed:

> "…states [and the Commission] must make sure that the new market entrants receiving universal service meet all the obligations required by the Act. These include providing service throughout the service area and advertising its availability. They also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service.
> Another consideration is the effect it will have on the cost of providing service. As the fund grows, so does the level of contribution. We must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for customers. The public interest also demands that regulators seriously consider whether a market can support more than one carrier with universal service. If not, then new designations shouldn't be given as a matter of course just because it appears they meet other qualifications….we shouldn't use universal service to support artificial competition from providers [CMRS] that don't provide the same or better service than what customers already receive."[25]

CMRS providers want the Commission(s) to: (a) Protect and promote their entry into rural LEC areas through ETC designation (and thus universal service support), with no public interest analysis of the efficiency of its services and technology and (b) Ignore any public interest analysis to determine if granting an ETC designation will, in fact, promote the interests of rural consumers. CMRS providers often assert that one of the principal obstacles faced is the high cost of serving rural areas. The only demonstration of these high costs now available to the Commission(s) is a forward-looking costs from a model (HAI Consulting, Inc. Wireless Model) that, to FW&A's knowledge is not even available to the public for review and analysis. The model contains several "cost drivers"

---

[24] Real costs incurred in the provision of service, not made up modeled costs that are unavailable for review and subject to manipulation to produce any desired result.

[25] Remarks of Commissioner Jonathan S. Adelstein to the NTCA Annual Meeting and Expo in Phoenix, Arizona on February 3, 2003, pages 3 and 4. Information in brackets added for clarity.

(spectrum, network infrastructure, interconnection back office operations and human resources and density) that cause wireless costs to be high in rural areas. In fact, the Commission(s) has been provided with no factual and verifiable data that demonstrates that a CMRS provider incurs high costs and thus needs universal service support. Instead, the facts about CMRS service and technology are:

1. As shown previously (See Table on Page 5), CMRS costs to provide service do not support a need for universal service support in rural areas.

2. CMRS providers have not demonstrated a need for universal service support. They have provided no actual costs to demonstrate that need. The only cost support provided is information from a model that can be manipulated to provide any cost result desired. The model is not, to FW&A's knowledge, publicly available for review and analysis to validate its veracity and accuracy. Comments from some consumers appear to belie claims that CMRS ETCs provide costly and modern service and technology:

> "…it's the only [cellular] service in America that actually has 'party line service'. 'I've made a call to someone and have had someone else break in and start talking'… A spokesperson for Cellular One Corporation said that equipment today would not allow for a party line to occur on a cellular phone. 'Even in the beginning of the cellular industry, it was almost impossible to have a party line on a cell phone.'….Members of the OST Tribal Council believe it is because Western Wireless is using the cheapest and most outdated equipment available."[26]

[26] Western Wireless company takes heat from tribal members, an article from the Lakota Journal, by Paul Richardson, for the week of September 20 to 27, 2002, information in brackets added for clarity.

Clearly, this CMRS ETC is not providing high cost technologies and services in the view of its customers. Apparently, it is attempting to provide less than adequate service and technologies in order to generate as much cash flow as possible, including cash flow from universal service funding, not to provide superior services and technologies, but to increase its bottom line.[27]

Providing universal service support to CMRS ETCs in circumstances in which they have not demonstrated a need, or utilize inferior technology, or provide inferior service is at odds with the Act's requirements, is not in the public interest and should not be allowed by the responsible Commission. The Commission(s) should reconsider its attempts to promote uneconomic and artificial rural competitive entry by wireless carriers. Such actions will harm the ability of existing providers to continue providing universal service and harm consumers.

(IV)
PRIMARY AND SECONDARY LINES MUST BE SUPPORTED

The Joint Board and Commission has previously considered and rejected the notion that only primary lines should be supported. The reasons that this idea was rejected previously are still valid today.

[27]A Salomon Smith Barney article dated February 3, 2003, indicated that Western Wireless's USF subsidy is tracking higher than estimates – it has increased by 23 percent . The article states that this: "…further validated the opportunity for rural wireless carriers to supplement organic EBITDA with high-margin subsidies….We favor WWCA…with an opportunity to increase cash flow with USF subsidies…"

A. If only primary lines are supported, second lines will cost customers substantially more than primary lines. If the customer rate were increased by just the interstate support loss (assuming only primary lines are supported), they would increase by $20.00 per second line per month for the rural ILECs represented by FW&A. Consequently, the use of second lines would likely be curtailed by customers, and many would be disconnected. This result would not be in the public interest because (a) The ability to use second lines as a reasonably priced method for dial-up internet access or for "teen" use would be lost, and (b) The loss in revenue resulting from disconnected second lines would increase basic local rates for primary lines.

B. There is no viable method to identify which line is the primary line that is not subject to dispute and manipulation.

- Roommates in a house or apartment (a single household) may have a primary and a secondary line. However, each person, irrespective of whether the line is the primary or secondary line, likely considers their line as a primary line.
- Lines used for dial-up Internet access (even though it is a secondary line in the same household) will likely be considered a primary line by a consumer because it is used for a different purpose than the voice line.
- If a consumer has both a wireless and a landline phone, which line will be considered primary?
- Which of the multiple cell phones for a single billing address will be considered the primary phone?
- Etc.

As the Joint Board and Commission found previously, these and many more questions must be answered if support is only provided for a primary line. Beyond attempting to sort out which lines would be considered primary, designating only a single line as the primary line qualifying for universal service support would incent double counting of primary lines and/or unethical ETC behavior. If the decision is left to the ETC service providers, it is likely that when a customer has both a cell and landline phone, both ETCs have every incentive to count their line as the primary line. Similarly, CMRS ETCs that have multiple cell phones on the same billing account may be tempted to count all of these phones. State and Federal regulators will be saddled with the responsibility of policing and sorting out the appropriate primary line determination on a case-by-case basis. If the decision as to which line is the primary line is left to the customer, multiple lines may again be counted due to a customer's perception of what is a primary line – both a cell and a landline phone may be counted; both a voice and a line devoted to dial-up may be counted, etc. Additionally, with customer designation of the primary line, there is the chance that ETCs will attempt to inappropriately and unethically influence the decision with financial or other inducements. Again, the regulators will be left to police and sort out the resulting disputes.

As the Joint Board and Commission previously decided, the only sensible course of action is to provide support for both primary and secondary lines.

(V)

AUCTIONS FOR UNIVERSAL SERVICE SUPPORT MUST BE REJECTED

This is another idea that the Joint Board and Commission previously examined and rejected as faulty. The main problem with the auction theory is that it will create a "race to the bottom" for support. For instance, a CMRS provider, which based on costs, would have no need for support, can bid support to a low enough level that the rural ILEC would no longer be able to operate as a viable and going concern. The winner of the auction, the CMRS provider, if it gets any support at all, would still be money ahead. The likely results of the auction process are that:

- Customers will have no assurance of reliable "any time" universal service from the CMRS provider. The CMRS provider has no quality of service obligation and thus universal service will mean dropped calls, spotty service, dead areas, static and difficulty hearing, etc. Further, customers will have no assurance of service at all. CMRS carriers, although they claim to serve the entire universal service area, in fact do not have complete coverage in rural areas, particularly outside of the rural metropolitan area. As shown previously, (See Table on Page 15), customers would also likely be faced with higher universal service phone rates, particularly if they are forced to use the CMRS per-minute rates for above the block of time calling, long distance, etc.
- Rural ILECs will be faced with the choice of (a) Raising rates, to recover the potential universal service fund revenue losses or (b) Going out of business. In Kansas, for the rural ILECs represented by FW&A, local exchange rates would have to be raised by $40.00 per-line / per-month to offset the potential loss of universal service funding. It is unlikely that even this action would allow the rural ILEC to continue as a going business concern. Customers would likely refuse to pay local exchange rates raised by $40.00 per-line / per-month. As a

consequence, customers would lose the ability to use a reliable, quality wireline service for voice or dial-up Internet connection to the public switched network.

- CMRS providers would increase the contribution to their bottom line.

The auction theory should be permanently relegated to the place where very bad ideas, at odds with the public interest, are consigned, and must by rejected by the Joint Board and Commission.

Respectfully submitted on behalf of the ILECs by,

Frederic G. Williamson
President, Fred Williamson & Associates, Inc.
2921 East 91st Street, Suite 200
Tulsa, OK. 74137-3355
Telephone: (918) 298-1618